

Okpara (Migration) [2024] AATA 1434 (17 May 2024)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mrs Chioma Lucy Okpara
CASE NUMBER:	2202724
HOME AFFAIRS REFERENCE:	BCC2018/2733846
MEMBER:	Maxina Martellotta
DATE:	17 May 2024
PLACE OF DECISION:	Perth
DECISION:	The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa: • cl 820.211(2) of Schedule 2 to the <i>Migration Regulations 1994</i> (Cth); and • cl 820.221(1)(a) of Schedule 2 to the <i>Migration Regulations 1994</i> (Cth).

Statement made on 17 May 2024 at 11:11am

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine and continuing relationship – sharing of household expenses – applicant’s assistance with the sponsor’s children – separate recorded residential addresses with Centrelink – support statements from family and friends – family social activities – support in seeking employment – decision under review remitted

LEGISLATION

Migration Act 1958, ss 5, 57, 65

Migration Regulations 1994, Schedule 2, cls 820.211, 820.221; r 1.15

CASES

Ally v MIAC [2008] FCAFC 49

Bretag v IRT [1991] FCA 582

He v MIBP [2017] FCAFC 206

Jayasinghe v MIMA [2006] FCA 1700

Li v MIAC [2007] FCA 1098

Li v MIAC [2007] FMCA 454

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The applicant applied for the visa on 21 July 2018 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the applicant did not satisfy cl 820.211 because they were not satisfied that the applicant met the definition of a spouse under s 5F of the Act.
4. The applicant appeared before the Tribunal on 2 April 2024 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor. The Tribunal deferred making a decision to allow the applicant to provide further materials in support of their evidence. In addition to the oral evidence, the Tribunal has also taken into consideration materials on the Department file and materials provided to the Tribunal.
5. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

6. Section 376 non-disclosure certificate

7. A s 376 non-disclosure certificate dated 2 March 2022 was included on the Department file. It stated that certain materials on the Department file had been given to the Minister or officer of the Department in confidence. The Department reissued the certificate (dated 28 March 2024) as the original certificate was invalid as it was not signed. The information related to information provided by a third-party agency. The Tribunal is satisfied that the reissued certificate is a valid certificate. In such a case, the Tribunal may, if it thinks appropriate, disclose the information to the applicant.
8. The Tribunal disclosed the existence of the certificate to the applicant and invited submissions as to the validity of the certificate and disclosure. The Tribunal concluded that the information was relevant to matters to be determined at hearing as it went to the claims made by the applicant at the time of application. The Tribunal notes that information covered by the certificate had been put to the applicant by the Department in correspondence (s 57 of the Act) dated 1 March 2021 inviting the applicant to comment on that information. The applicant provided a response to that information to the Department on 26 March 2021.
9. The Tribunal at hearing also disclosed the gist of the information at hearing which was to the effect that the sponsor had provided different residential addresses to Centrelink to that provided in support of the visa application. The applicant and the sponsor in their evidence addressed those matters, the detail of which is set out in these reasons.

CONSIDERATION OF CLAIMS AND EVIDENCE

Whether the parties are in a spouse or de facto relationship

10. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen by birth.
11. 'Spouse' is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s 5F(2)(a)–(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in reg 1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in reg 1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

12. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The Department file contained a copy of a Notice of Intended Marriage dated 19 June 2018 which references the applicant and sponsor. Also included was a copy of a Marriage Certificate certified by the Western Australian Registrar of Births, Deaths and Marriages. It is dated 14 January 2021 and confirms that the applicant and sponsor were married on 20 July 2018. This evidence is consistent with oral evidence provided at hearing by the applicant and sponsor.
13. The Tribunal finds that the applicant and sponsor were married on 20 July 2018. The Tribunal is satisfied and finds that on the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s 5F(2)(a).

14. Are the other requirements for a spouse relationship met?

15. The Tribunal had the opportunity of taking oral evidence from the applicant and sponsor. This included evidence regarding the development of their relationship, their relationship history, knowledge of each other's background and family history, financial, social and household aspects of their relationship, and the nature of their commitment to each other.

16. Financial aspects of the relationship

17. The Tribunal has had regard to the oral evidence provided at hearing as well as documents provided relating to the financial aspects of the relationship, including joint ownership of real estate or other major assets and any joint liabilities, the extent of any pooling of financial resources, especially in relation to major financial commitments, whether one person in the relationship owes any legal obligation in respect of the other and the basis of any sharing of the day-to-day household expenses.

18. *Joint ownership of real estate or other major assets*

19. The applicant and sponsor gave consistent evidence that they do not jointly own any real estate or other major assets.
20. They applied for a home loan but due to the applicant's visa status and their financial circumstances were not approved.
21. The applicant provided evidence that they have jointly purchased various household items. Copies of receipts evidencing joint purchase of items such as a garden shed (2018), furniture and household goods (2019 and 2021) were included in the Department file.

22. *Joint liabilities*

23. The applicant and sponsor stated that they do not jointly service any liabilities.

24. *Pooling of financial resources and liabilities and any sharing of the day-to-day household expenses*

25. The applicant and sponsor provided the following evidence:
 - a) The applicant has been studying and working on either a casual or part-time basis throughout the relationship. She has recently finished studies and is awaiting registration as an enrolled nurse. She has worked in the disability support and aged care sector.
 - b) The sponsor throughout the relationship has been in receipt of family assistance and income support payments.
 - c) They operated a joint bank account, which they hoped would be utilised for joint savings and to build a home deposit. However, when their application for a home loan was not approved and also due to their financial circumstances they decided to close the account as they have not been able to save any money. The evidence at hearing is that they hope to reopen a joint account in the future.
 - d) They each operate separate bank accounts.
 - e) The applicant explained that pooling of financial resources occurs within the relationship to the extent that they are each able to do so. The applicant said that as the sponsor has care of dependent children from a previous relationship and his income is limited, he makes financial contributions to shared costs as and when he is able to do so.
 - f) The sponsor stated that if he needs money to meet certain expenses the applicant will give him money as requested if she can.
 - g) At various times throughout the relationship, they have shared day-to-day household costs. The applicant gave evidence that when they were leasing a property in Maddington she paid the rent through her employer's salary packaging arrangement, and the applicant met the utility costs. Since living in Port Kennedy, the sponsor meets the rental and utilities costs for that property which come out of his Centrelink payments. The applicant meets other household costs such as groceries. The applicant stated that the sponsor also contributed to household costs in the period leading up to the marriage. The sponsor gave consistent evidence about these financial arrangements.

26. The applicant provided the Department with copies of joint bank statements from July 2018 to December 2020. These show various transactions for day-to-day expenses. They show salary payments, salary packaging credits and transfers mainly in the applicant's name.
27. The Tribunal asked the applicant why the transactions mainly referenced her and not also the sponsor. The applicant stated that the sponsor had limited income but he made contributions as and when he could do so. She explained that loan repayments in the statement related to a loan she had taken out for a car.
28. Post hearing the applicant provided copies of transactions from her account showing mobile phone payments made for one of the sponsor's children, as well as transactions for groceries which the applicant says is evidence of her payment of household costs.

29. Whether one person in the relationship owes any legal obligation in respect of the other

30. The applicant and sponsor did not provide any evidence of any legal obligations owed in respect of each other.

31. Nature of the household

32. The Tribunal has had regard to the evidence as to the nature of the household including joint responsibility for the care and support of children, the parties' living arrangements and any sharing of the responsibility for housework. The applicant and sponsor provided the following evidence.

33. Joint responsibility for the care and support of children

34. The applicant and sponsor gave evidence that the sponsor has four children from a previous relationship. The two youngest who are dependants are E and C.
35. The applicant's evidence was that she was slowly introduced to E and C when she and the sponsor were dating but it was only when she and the sponsor recognised that their relationship was ongoing that she was formally introduced as their father's partner. The applicant explained that she and the sponsor did not want to take that step with the children until they were certain about their personal relationship. The applicant stated that she has only met the sponsor's other two children on a couple of occasions and does not have much to do with them.
36. The sponsor gave evidence that he has had shared and full-time care of E and C throughout his relationship with the applicant.
37. The applicant's evidence was that the sponsor has throughout their relationship had a significant role in caring for his children. There was a period when he was living with her in their Maddington rental but also spending time with his children who were living with his extended family in the Rockingham and Port Kennedy area. The applicant stated that coming from a culture that recognises the importance of extended family systems and community living, she has never had an issue with those arrangements.
38. The applicant stated that since moving to Port Kennedy, she and the sponsor live in that property with extended members of his family which also includes his two children. Currently the sponsor's son has returned to live with his mother and the sponsor's daughter lives with them. She has assisted and been part of the care arrangements for the sponsor's children when they have been in his care which includes doing school drop-offs and pick-ups. The

applicant stated that she provides emotional and financial assistance to the sponsor's children.

39. The sponsor stated that the applicant assists him with the care of his children. He stated in particular as his daughter has become a teenager, anything that comes up for her he calls on the applicant.
40. The applicant provided the Department and Tribunal with photographs depicting herself and the sponsor together with his children. Also on the Department file were the following:
 - a) An undated statement said to have been provided by the sponsor's children which states that they have a close relationship with the applicant who actively engages with them and provides them with practical and emotional support.
 - b) A statement provided by the sponsor's mother referring to the role that the applicant plays in the care of the children and her support of the sponsor in parenting.

41. Living arrangements

42. The Tribunal referred the applicant to correspondence sent by the Department (1 March 2021). That correspondence (natural justice notice) invited her to comment on information about certain matters including information obtained from Centrelink about the sponsor's residential addresses which record that he lived in Wellard from September 2017, Rockingham from February 2020 and in Port Kennedy from October 2020 and that this was inconsistent with information provided in her application about about her living arrangements with the sponsor.
43. The applicant stated in her evidence that she was not familiar with how Centrelink worked but she understood that the sponsor had maintained some of those addresses because of his children.
44. The applicant gave evidence that when she first met the sponsor and during the period that they were dating, she was living in a rental property located in Queens Park with her sister and her sister's four children. The sponsor would spend time with her at that property, but he was living with his parents in Callista.
45. In July 2018 her sister purchased a four-bedroom property in East Cannington. She moved to that property and after her marriage she and the sponsor briefly lived there and shared a bedroom. The sponsor would also to spend time visiting his children. In about September 2018 she and her sister travelled back to Nigeria. Their father had passed away before her marriage and in accordance with their custom they travelled back to participate in ceremonies and spend time with family. She was away for a couple of months. The sponsor did not remain in the East Cannington property during that time but stayed with his family.
46. When she returned, she and the sponsor jointly leased a property in Maddington. They rented that property from December 2018 until October 2022. During that period the sponsor and she lived in that property however the sponsor was also spending time with his children in the Rockingham area. It became apparent to them however that the arrangement was unsustainable and in 2022 she and the sponsor commenced living in the Port Kennedy property with his children and other members of his family.
47. The sponsor gave evidence explaining the living arrangements he had put in place to accommodate his children and provided an explanation as to why his Centrelink records show him living in different addresses during the same period he was living with the applicant. He provided the following information:

- a) Prior to meeting the applicant, he was living with a brother in Wellard. When he met the applicant, he would spend time with her at her home as well as spending time with his family and children.
- b) In 2017 he was in prison for about three to four months. This was a very difficult time for him and he did not maintain contact with his family or with the applicant in that period. He was at his lowest and he did not want to see or speak to anyone.
- c) When he was released, he was required to have an address for his parole and that was his parents' home in Callista. He did not think to update his address with Centrelink, so Centrelink retained the Wellard address on their records.
- d) He later updated his address with Centrelink to the Rockingham address. This was a property that his parents had moved to. He needed to retain a Rockingham address because his children were attending a local school.
- e) He was later assisted to take on a lease with the Department of Housing for the Port Kennedy property. His motivation was that he needed a place for his children to live that was in their school catchment area. His brother and his brother's former partner (B) lived in that property with their two children (the sponsor's nieces) together with his (the sponsor's) two children. He also stayed in that property as well as living in the Maddington property with the applicant. He described his living arrangements as being 50% at Maddington and 50% at Port Kennedy.
- f) When his brother separated from his partner, B stayed on in the Port Kennedy property with her children. The sponsor stated that he continued the pattern of spending time in Port Kennedy taking care of his children and when he was not there his brother would stay to provide a male presence in the home. He mainly stayed over in Port Kennedy when the applicant was working night shifts.
- g) At that time it was not an option for the applicant to move to Port Kennedy because of her studies and her work, it was too far for her to travel. The sponsor stated that it was also not an option for him to move the children to Maddington. Their mother was in the Rockingham area, and he did not want his children changing schools. His son has ADHD, and it would be too disruptive to move him to a new school and new teachers.
- h) It was not an ideal situation. He was using public transport to travel between Port Kennedy and Maddington. Finally, it got too difficult, and he and the applicant decided that they would all live together in the Port Kennedy property.
- i) Since late 2022 he and the applicant have lived in Port Kennedy, together with his two nieces and their mother (B) and his two children until his son has since left to live with his mother.

48. The Tribunal put to the sponsor that his evidence to the Tribunal about these arrangements appeared to vary from a statutory declaration he provided to the Department (in response to their natural justice notice). Whilst he describes his children living in Port Kennedy with his brother and his partner and that he maintained that address in his name to ensure that his children could remain living in the area, he did not explain that he was in effect living across the two properties. The sponsor stated that he was worried that if the Department of Housing did not assess him as living in the Port Kennedy property, then he would lose the property and his children would not be able to remain living there. He said he was scared that he would lose his children and was trying to do what was best for them.

49. The Tribunal asked the sponsor if he and the applicant were separated or had a period of separation. The sponsor denied this. He stated that his living arrangements were about trying to accommodate his children and his relationship with the applicant.
50. The applicant in her evidence stated that prior to moving to Port Kennedy, her employment was based in Victoria Park and her studies were in Bentley which was why they rented the Maddington property. She said it was simply not practical for her to move into Port Kennedy at that time because of the commute time.
51. On the Department file was a statement provided by the sponsor's mother which confirmed that she and her husband had moved to Rockingham and the children were living in Port Kennedy.
52. The applicant provided the Tribunal with the following materials:
 - a) Correspondence from a property manager confirming that the applicant and sponsor were joint tenants of the Maddington property from 18 December 2018 to 12 October 2022.
 - b) Statement from an education institution confirming that the sponsor's son was enrolled as a student between February 2017 and December 2023 at a primary school located in Baldivis and his home address was recorded as the Port Kennedy address.
 - c) Evidence that the sponsor's daughter was attending the local high school within the same intake area.
 - d) Letter from an education institution stating that the sponsor's daughter is currently attending college and her home address is recorded as the Port Kennedy address.

53. *Sharing of the responsibility for housework*

54. The applicant and sponsor provided consistent evidence about how they manage their day-to-day household tasks. That evidence was as follows.
55. The applicant described that she and the sponsor had no set division of housework. In the Maddington property, they would share responsibilities around her studies and work schedule and the sponsor's caring responsibilities for his children. In the Port Kennedy property, they continue to share household responsibilities. She and the sponsor live in that property with members of the sponsor's family. Household tasks are undertaken by the adults in the household. The household in that regard is dynamic as it includes at various times, the sponsor's children, his nieces and the mother of his nieces. At various times other members of the family also stay when they require accommodation.
56. The sponsor's evidence was consistent. He stated that tasks are shared depending on what needs to be done. He described that he and the applicant will share tasks such as shopping and cleaning. In Port Kennedy the day-to-day arrangements are such that they get up, sort the children and get them off to school. If the applicant is not at work or studying they do things together such as the shopping, go to the beach and take the dog for a walk.
57. In Port Kennedy, he and the applicant have one bedroom, his daughter is in another bedroom and B and her children are in the other bedroom. B still lives with them due to the age of the nieces and in the current rental market they can't find a house. They have tried and can't get one and as they are part of the family, he and the applicant are happy to continue to accommodate them.

58. Social aspects of the relationship

59. The Tribunal has had regard to the evidence provided as to whether the parties represented themselves to others as being in a genuine de facto relationship and now as being married to each other, the opinion of their friends and acquaintances about the nature of the relationship and any basis on which the parties plan and undertake joint social activities. The applicant and sponsor provided the following evidence.

60. Representation to others

61. The applicant told the Tribunal that when she and the sponsor started dating he was introduced to her sister. As her extended family live overseas, he has not personally met other people in her family but he has spoken to them on the phone. The sponsor's evidence was consistent in that regard.
62. The applicant stated that she was introduced to members of the sponsor's family as their relationship progressed. She has a good relationship with his family members and the sponsor's two youngest children. Members of her family, acquaintances and community know her to be married to the sponsor and she represents herself to the world at large as partnered.
63. The sponsor in a declaration provided to the Department responded to information that he had not updated his married status with Centrelink and also did not represent himself as partnered in his social media (Facebook) account. He stated that he had not updated his Facebook status for some years and it was not a priority but he has since having the matter raised by the Department updated his status. His failure to update his partnered status with Centrelink was an oversight on his part and he has since updated his record to show that he is married.
64. At hearing, the sponsor told the Tribunal that he had made attempts to change his relationship status with Centrelink in 2018 but that he found interactions with that agency at times confusing and frustrating and he would just 'walk out'. With respect to his social media posts, he did not see that updating his status on Facebook was something he needed to do. He is not sure why he did not include information about the applicant, but he mainly used his account 'to stir people up' or to buy items. His family knew about his relationship, and he did not need to post it to the world.
65. The Tribunal has noted receipts provided to the Department for periods between 2018 and 2021 which are made out to the sponsor and applicant using the same family surname. Also as noted, there were photographs showing the applicant and sponsor with members of each other's family and friends. Centrelink records provided to the Department show the sponsor's status as married with details of the applicant. A copy of a 'joint tribute' acknowledging the passing of the applicant's father made by the applicant and the sponsor was also on the Department file.
66. The Department file contains statements and statutory declarations provided by the applicant's sister (dated 11 August 2018 and also 18 February 2021), the sponsor's mother (dated 1 August 2018 and 26 March 2021), the sponsor's brother's former partner B (dated 4 February 2021), a friend of the applicant (dated 3 February 2021), the pastor of the applicant's church (dated 27 March 2021) and the sponsor's children. Each of those statements refers to the applicant and sponsor as being recognised to be each other's spouse and that their relationship is seen as being genuine and committed.

67. *Any basis on which the parties plan and undertake joint social activities*

68. The applicant and sponsor gave consistent evidence. The applicant stated that the sponsor's children are a significant part of their lives, and many social events will revolve around spending time with family. She and the sponsor enjoy taking walks at the beach, going out for a meal or seeing a movie.
69. The sponsor as noted gave consistent evidence. When the applicant is not at work or studying they do things together such as shopping, going to the beach and taking the dog for a walk. Weekend activities include spending time with the children and family.
70. The Tribunal noted photographs provided to the Department and Tribunal which as noted depict the applicant and sponsor together and with family and friends at a range of venues and events.

71. *Nature of the persons' commitment to each other*

72. The Tribunal has had regard to the evidence provided in relation to the nature of the parties' commitment to one another including the duration of the relationship, the length of time they have lived together, the degree of companionship and emotional support they draw from each other and whether they see the relationship as long term. The applicant and sponsor provided the following evidence.

73. *Duration of the relationship and length of time they have lived together*

74. The applicant and sponsor provided consistent accounts of how they met and how their relationship has progressed.
75. The applicant provided the following evidence:
- a) She was living in Australia on a student visa.
 - b) She met the sponsor in January 2016 at Scarborough Beach. She would go there on a regular basis and on one occasion she saw the applicant and on a subsequent visit she saw him again and recognised him. They commenced a conversation, exchanged contact details and from there they became friends.
 - c) They would occasionally speak with each other on the phone and sometimes would see each other. Her time was limited because of her studies but they maintained a friendship. In the later part of 2016, they saw each other more regularly and it was during that period the relationship became romantic. They would spend time at each other's homes, go to the park or see a movie.
 - d) By March 2018 they recognised that their relationship was such that they wanted to make a commitment to marriage. They married in July 2018.
 - e) Since their marriage apart from the time when she returned to Nigeria for her father's remembrance they have lived together and continue to do so to this day. Within that context the applicant during the time they rented in Maddington was also spending time in Rockingham.
76. The applicant stated in her evidence that she knows about the sponsor's family and personal history. His family are from Irish descendants. She knows the sponsor was born around Subiaco and he finished Year 10. He did some work in a bar and a factory. He also did

outdoor work. She knows about his past convictions; the sponsor has shared some information about the circumstances but she does not dwell on his past.

77. The sponsor's account of how he and the applicant met and how their relationship developed was consistent with the applicant's evidence. The Tribunal observed that the sponsor's recollection of timeframes and when they started to live together was at times unclear. The sponsor stated that he could not clearly recall when they started living together as he is not too good on dates.
78. The Tribunal asked the sponsor why it appeared he had difficulties recalling specific dates. He stated that the period he was in jail was very stressful and subsequent to his release, he was having a lot of problems with his ex-wife and disputes about his care of the children, and the combination of those factors have impacted on his recollection of events. Particularly during the period that he had taken on the lease in Port Kennedy and he and the applicant were also leasing the property in Maddington it was very difficult to 'juggle' his marriage with his parenting responsibilities.

79. The degree of companionship and emotional support they draw from each other

80. The applicant told the Tribunal that in their relationship, she and the sponsor emotionally, physically and financially provide each other with support. When they first met she helped the sponsor to update his resume and encouraged him in his attempts to find employment. She feels however, that mostly due to his background it has not been easy for him to secure employment but they are hopeful that going forward that will change.
81. The applicant said that she and the sponsor try to be there for each other. When she lost her father, the sponsor was there supporting her and he takes on more responsibilities around the home when she was studying and working.
82. The sponsor stated in his evidence that he has a very strong connection with the applicant and this is something he has not previously experienced in other relationships. The applicant has always supported him particularly during the period when he was regularly travelling between their home in Maddington and spending time with the children in Port Kennedy. The applicant is aware of his previous convictions. When the applicant was studying and working, she would sometimes be stressed and they would spend time talking or go for a walk to clear their heads. The applicant has supported him and his children but he still holds a lot in and when he needs someone to talk to or vent, the applicant has been there for him.

83. Whether they see the relationship as long term

84. The applicant and sponsor each provided consistent evidence that they are committed to the relationship. They each described that their future plans should the visa be granted is to try and save money to buy their own home.
85. The applicant said that the visa situation has affected them emotionally and financially. If the visa was not granted there is no 'plan b', it would be very difficult. They try not to think about what would happen if the visa is not granted. The sponsor said that if the applicant cannot stay in Australia it would be very difficult. He has his children but he would have to try and find some way of seeing her.

86. Assessment of evidence

87. In the Tribunal's assessment the applicant was credible and cogent in her evidence. The Tribunal has noted that in some aspects the sponsor's recollection appeared to be not as clear as that of the applicant. Having had an opportunity of taking the sponsor's evidence

and testing that evidence, the Tribunal on balance is satisfied and accepts that his recollection of certain details and aspects were impacted by his experiences at the time which he described as stressful.

88. One aspect in this matter has been the evidence about conflicting residential addresses the sponsor has provided. On balance, the Tribunal accepts the explanation that the sponsor in essence felt compelled to maintain a residential address in the Rockingham area because that is where his children were attending school and it was important for their stability that they remained in that area. It appears to the Tribunal that during the period that the applicant and sponsor were renting in Maddington they were trying to accommodate a situation which prioritised the best interests of the sponsor's children whilst at the same time accommodating the practicalities of the applicant's study and employment commitments. The Tribunal does not consider that arrangement as indicative of the relationship being contrived.
89. The Tribunal is satisfied that whilst the sponsor spent time in the Port Kennedy property this does not mean he and the applicant were not cohabiting.

Are the criteria for a spousal relationship met at the time of application and at the time of decision?

90. The Tribunal makes the following findings of fact:

Financial aspects of the relationship

91. In relation to this aspect of the relationship:
- a) At the time of application and at the time of decision, the applicant and sponsor did not legally own any real estate or other major assets in their joint names.
 - b) At the time of application, the applicant and sponsor operated individual bank accounts and a joint bank account. At the time of decision the applicant and sponsor operate individual bank accounts.
 - c) The applicant at the time of application was studying and has recently completed her studies. The applicant at the time of application and decision is also employed. The sponsor at the time of application and decision is not employed and is in receipt of income support payments.
 - d) Within the context of these financial circumstances, the applicant and sponsor have provided each other with financial resources and have jointly met shared household costs and expenses.

Nature of the household

92. The applicant and sponsor, at the time of application and at the time of decision:
- a) Have lived together since their marriage. Their living arrangements have accommodated the sponsor also spending time with his children.
 - b) Share day-to-day household tasks and activities including cleaning, shopping, home maintenance and gardening.
 - c) Provide care and support to the sponsor's children.

Social aspects of the relationship

93. The applicant and sponsor, at the time of application and at the time of decision:
- a) Represented themselves to the world at large as a married couple. They are recognised and acknowledged by family and friends as being in a genuine and committed relationship.
 - b) Have planned and undertaken social activities as partners.

The nature of their commitment to each other

94. The applicant and sponsor:
- a) First met in 2016. They were married in July 2018.
 - b) At the time of application and at the time of decision they have provided each other with companionship and support.
 - c) At the time of application and at the time of decision, they have described their relationship as long term, genuine and committed.

Other findings of fact

95. In addition, according to documents provided to the Tribunal, the Tribunal is satisfied and finds that:
- a) The applicant is sponsored by her spouse.
 - b) The sponsor is an Australian citizen by birth.¹
 - c) The applicant and sponsor are both over the age of 18 and are not related by family.²
 - d) At the time of her application the applicant was on a student visa.³
96. The task for the Tribunal is to consider all relevant circumstances and evidence of the relationship in determining whether, on balance, the requirements that define a genuine and continuing relationship and a mutual commitment to a shared life to the exclusion of all others are met, where the parties are living together or not separately and apart on a permanent basis. In this regard, the Tribunal must also consider relevant evidence of events that have occurred after the date of application. Such evidence is relevant if it tends to logically show the existence or non-existence of factors relevant to the determination.⁴
97. In this case whilst the applicant and sponsor do not jointly own any major assets, in the context of their particular financial circumstances the evidence shows that they are providing to the extent they are able a level of pooling of financial resources and a sharing of day-to-day household expenses. There is also evidence of them jointly purchasing various household items during the course of their relationship. In the Tribunal's assessment, the

¹ Sponsor's birth certificate was provided to the Department.

² Birth certificates were provided to the Department.

³ Notice of grant of bridging visa on the Department's file confirms that the applicant was on a current student visa which was active.

⁴ *Ally v MIA* [2008] FCAFC 49 at [32]–[35]; *Jayasinghe v MIMA* [2006] FCA 1700 at [35], citing *MIEA v Pochi* (1980) 4 ALD 139 at [24] per Deane J, which held that evidence of subsequent events may be taken into account if it 'tends to logically show the existence or non-existence of' the relationship at that particular time; and see also *Bretag v IRT* [1991] FCA 582 at [13]–[15].

evidence demonstrates that the applicant and sponsor have developed a genuine and committed bond which has seen them provide each other support during difficult periods and in particular mutual support in prioritising the best interests of the sponsor's children. In the Tribunal's assessment, there is also compelling and cogent evidence which goes to the social aspects of the relationship.

98. In this matter, having had the opportunity of observing and testing the applicant's and the sponsor's affirmed evidence at hearing, and taking into account the materials and documents before the Tribunal and its findings of fact, the Tribunal is satisfied and finds that the evidence supports the conclusion that, at the time of application and at the time of decision:
- a) The applicant and the sponsor have a mutual commitment to a shared life as a married couple to the exclusion of all others, and the relationship is genuine and continuing.⁵
 - b) The applicant and sponsor have continuously lived together since their marriage.
 - c) At the time of the visa application the applicant was the holder of a substantive visa.
 - d) At the time of the visa application, the applicant was the spouse of the sponsor who is an Australian citizen not prohibited from being a sponsor.
 - e) At the time of decision, the applicant continues to be the spouse of the sponsor.⁶
99. On the basis of the above the Tribunal is satisfied that the requirements of s 5F(2) are met at the time the visa application was made and the time of this decision. Therefore, the applicant meets cl 820.211(2) and cl 820.221(1)(a) of the Regulations.

DECISION

100. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:
- cl 820.211(2) of Schedule 2 to the *Migration Regulations 1994* (Cth); and
 - cl 820.221(1)(a) of Schedule 2 to the *Migration Regulations 1994* (Cth).

101.

Maxina Martellotta
Member

⁵ While the prescribed matters must be considered in partner visa cases, they are not criteria that must each be satisfied: *Li v MIAC* [2007] FMCA 454 at [73]. Decision upheld on appeal in *Li v MIAC* [2007] FCA 1098.

⁶Cl.820.211(2B)

ATTACHMENT – Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).